

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Amendment of the Commission's Space Station	)	IB Docket No. 02-34
Licensing Rules and Policies	)	
	)	
2000 Biennial Regulatory Review --	)	IB Docket No. 00-248
Streamlining and Other Revisions of Part 25 of	)	
the Commission's Rules Governing the	)	
Licensing of, and Spectrum Usage by, Satellite	)	
Network Earth Stations and Space Stations	)	

**COMMENTS OF PEGASUS DEVELOPMENT CORPORATION**

**PEGASUS DEVELOPMENT CORPORATION**

Scott A. Blank  
Senior Vice President – Legal and Corporate  
Affairs, General Counsel, and Secretary  
225 City Line Avenue, Suite 200  
Bala Cynwyd, Pennsylvania 19004

Dated: June 3, 2002

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Amendment of the Commission's Space Station	)	IB Docket No. 02-34
Licensing Rules and Policies	)	
	)	
2000 Biennial Regulatory Review --	)	IB Docket No. 00-248
Streamlining and Other Revisions of Part 25 of	)	
the Commission's Rules Governing the	)	
Licensing of, and Spectrum Usage by, Satellite	)	
Network Earth Stations and Space Stations	)	

**COMMENTS OF PEGASUS DEVELOPMENT CORPORATION**

Pegasus Development Corporation ("Pegasus") hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") regarding the revision of the Commission's space station licensing rules.<sup>1</sup> In general, Pegasus supports the Commission's initiative to reform its rules in order to speed the provision of service to the public and increase competition. To accomplish these goals, Pegasus urges the Commission to modify and streamline its existing licensing process rather than adopting a radically new or untested licensing process, such as first-come, first-served. With respect to specific proposals, Pegasus recommends that the Commission establish clear and objective selection criteria for applicants, including a preference for new entrants.

---

<sup>1</sup> See *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies, 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, FCC 02-45 (February 28, 2002). The NPRM appeared in the Federal Register, 67 FR 12498, on March 19, 2002.

## **Background**

*Pegasus Development Corporation.* Pegasus is a wholly owned subsidiary of Pegasus Communications Corporation, a publicly traded company. Pegasus was an applicant in the second Ka-band processing round and now holds a license to provide Ka-band geostationary orbit fixed-satellite service.<sup>2</sup> As an active participant of that proceeding, Pegasus is well-situated to provide comments regarding the Commission's licensing process.

Pegasus (through its affiliates) also currently provides direct broadcast satellite services, via the DirecTV platform, to approximately 1.4 million rural households in 41 states. Additionally, Pegasus owns or operates a total of eleven television stations. Pegasus has experienced exceptional growth since its founding in 1991, and now is the 10th largest multichannel video provider in the U.S., generating more than \$800 million revenue in 2001. Unlike other major multichannel service providers, Pegasus' primary focus is on rural and unserved areas.

## **Discussion**

In general, Pegasus supports the Commission's initiative to reform its satellite licensing rules.<sup>3</sup> Pegasus does not believe that drastic changes are necessary and accordingly urges the

---

<sup>2</sup> See *Pegasus Development Corporation*, 16 FCC Rcd 14378 (2001). On March 21, 2002, Pegasus electronically filed a *pro forma* assignment application to transfer its Ka-band authorization for two satellites at the 107°W orbital location to its indirect wholly owned subsidiary, Pegasus Development 107 License Corporation.

<sup>3</sup> Pegasus' comments are directed at processing rounds for geostationary orbit satellite systems in new satellite spectrum. To the extent that Pegasus' proposals are readily applicable to processing rounds for non-geostationary orbit systems, Pegasus urges adoption of similar rules. Additionally, for mature satellite spectrum, such as the C band and Ku band, a different licensing process may be appropriate.

Commission to modify and streamline its existing licensing process rather than adopting a radically new or untested licensing process, such as first-come, first-served. In fact, the adoption of a first-come, first-served regime is likely to be chaotic and lead to an increase in speculative applications.

In reforming its licensing process, the Commission should bear in mind its general policy goals of facilitating competition and expediting the provision of satellite services. *See* NPRM, at ¶1. In furtherance of these goals, Pegasus urges the Commission to adopt clear and objective selection criteria for applicants, including specifically a preference for new entrants. The Commission also should impose a limit on the number of new satellites any applicant may request.

*Selection criteria should support new entrants.* Under the current system, some of the delay in licensing is attributable to the Commission's inability to establish priority among applicants when there is a shortage of spectrum or desirable orbital slots.<sup>4</sup> In the past the Commission has used a variety of methods to overcome this deficiency. It has strictly enforced its financial qualifications standards in order to eliminate applicants;<sup>5</sup> it has encouraged

---

<sup>4</sup> *See* NPRM, at ¶10.

<sup>5</sup> *See, e.g., Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, at ¶28 (1994).

negotiations and settlement by the applicants;<sup>6</sup> and it has assumed fungibility of orbital slots to eliminate mutual exclusivity.<sup>7</sup>

By pre-establishing objective selection criteria, the Commission will reduce, if not eliminate, the difficulty and delay in resolving processing rounds. There will be less need for the Commission to exercise any discretionary authority in order to resolve licensing decisions. Similarly, applicants will be able to readily determine their standing among other applicants in the processing round, which would eliminate uncertainty and facilitate negotiations.

More specifically, Pegasus supports the Commission's proposal to establish a preference for new entrants, applicants that have no attributable interests in licenses for the applied for satellite service band. If there are several new entrants, the Commission should favor those new entrants that have fewer operating systems in all satellite service bands over those with more operating systems. *See* NPRM, at ¶71. Such a preference will help to prevent incumbents from being an obstacle to settlement, as occurred in the second-round Ka-band proceeding, and will ensure that satellite markets will continue to be open to competition. Pegasus also supports the Commission's proposal to define "new entrants" using the auction attribution rules. *See* NPRM, at ¶52. Under such attribution rules, a satellite license (or application) is attributable to an applicant if the applicant has equity or debt interests in aggregate exceeding 33% of the total asset value of the licensee. *See id.*

---

<sup>6</sup> *See* NPRM, at ¶10; *see also Assignment of Orbital Locations to Space Stations in the Ka-band*, 13 FCC Rcd 1030, at ¶2 (1997).

<sup>7</sup> *See* NPRM, at ¶79; *see also In the Matter of Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-band*, 16 FCC Rcd 141389, at ¶5 (2001).

*Limit on pending applications.* There also should be a limit on the number of new orbital locations that an applicant can request for any one frequency band. As a typical matter, the limit should be two orbital locations. This is the maximum number of new geostationary satellites that even the most financially resourceful satellite licensee is likely to construct at any one time. If the satellite licensing process can be effectively streamlined so that satellite companies do not feel the need to warehouse additional inventory of licenses, no company will have a legitimate basis to apply for more orbital locations. This is a sensible, measured approach that would cut down on the number of applications and thus ease the resolution of processing rounds. Moreover, there would be little, if any, negative effect on actual deployment -- it is extremely rare that a licensee is simultaneously building more than two satellites for previously unpopulated orbital locations.

To the extent an applicant demonstrates actual committed funds for more than two satellites, the Commission should consider granting a waiver of the limit. The demonstration should include both (i) actual availability of funding, or a reasonable percentage of the required funding; and (ii) a firm commitment to expend the funds. (With respect to the first criterion, the amount at issue should account for pending applications and unbuilt licenses in all bands.) In the past, too often there has been an assumption that those that have the funds are more likely to proceed, regardless of whether those funds are actually committed to building the satellites at issue. Other than in the context of these applicants whose “eyes are bigger than their stomachs,” financial qualifications standards should be as limited as possible, so as not to inhibit entrepreneurship and the development of new competition.

Pegasus does not support the adoption of the other selection criteria identified in the NPRM. Some of the criteria support no sound policy objectives (preference for earlier filed

applicants in a processing round) and others are susceptible to gaming (preference for applicants that have begun satellite construction). *See* NPRM, at ¶¶72-75.

*Milestones.* Milestone enforcement should not be the primary method by which the FCC controls spectrum warehousing -- the Ka-band licensing processing round has shown how problematic that approach can be. Rather, as discussed above, the FCC should impose reasonable limits at the threshold. If applied as proposed, there would be a dramatic decrease in the number of speculative applications the FCC must process while accommodating the growth of incumbents and the opportunities for new entrants. Nonetheless, there is a need for some Commission process to return spectrum that has been licensed to an entity that no longer has concrete plans to put it to use. Therefore, the Commission should maintain its milestone policy and apply it as necessary to prevent detrimental warehousing. Consistent application of the threshold requirements outlined above will afford the FCC more discretion in milestone enforcement to take account of unique facts and circumstances, which are particularly applicable to introduction of new technologies and services. Milestone enforcement should be pursued aggressively and swiftly when demand for the licensed slots is unsatisfied or when it is apparent that the licensee had no real plans, or has abandoned them. In other circumstances -- when the license is not precluding grant of another application or when circumstances beyond the control of the licensee have introduced delay -- the FCC can exercise its discretion.

*Anti-trafficking.* The Commission also proposes to eliminate its regulations prohibiting trafficking in bare licenses for a profit.<sup>8</sup> As interpreted by the Commission, a licensee impermissibly profits from a transfer only if it receives an amount greater than its total financial

investment plus reasonable interest.<sup>9</sup> As evidenced by some of the Commission's more recent decisions, the Commission has been fairly lenient in its assessment of whether a license is bare and whether the transfer is for profit.<sup>10</sup>

Pegasus takes no position on whether the Commission should eliminate its anti-trafficking regulations. In a well-functioning licensing process, the anti-trafficking regulations may be unnecessary, as the Commission suggests. *See* NPRM, at ¶¶102-103. It is critical, however, that the Commission enforce its rules if it maintains them. Otherwise, companies are encouraged to compete in the regulatory arena rather than the marketplace, and there is needless litigation and delay as the rules are tested.

---

<sup>8</sup> *See* 47 C.F.R. §25.145(d).

<sup>9</sup> *See In the Matter of Application of VisionStar, Incorporated*, 24 CR 1326, at ¶20 (2001); *see also NetSat 28, Company, L.L.C.*, 16 FCC Rcd 14471, at ¶15 (2001). In the NPRM, the Commission suggests that “[t]rafficking consists of obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services to the public or for the licensee’s own private use.” *See* NPRM, at ¶109 (citing 47 C.F.R. §1.948(i)). The Commission, however, has not expressly applied that definition in satellite transfer cases.

<sup>10</sup> *See generally, In the Matter of Application of VisionStar, Incorporated*, 24 CR 1326 (2001); *NetSat 28, Company, L.L.C.*, 16 FCC Rcd 14471 (2001); *KaStar 73 Acquisition, LLC*, and *KaStar 109.2 Acquisition, LLC*, 15 FCC Rcd 1615 (1999).



## Conclusion

For the aforementioned reasons, Pegasus respectfully requests that the Commission adopt policies and rules for space station licensing consistent with these comments.

Respectfully submitted,

**PEGASUS DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Scott A. Blank  
Senior Vice President – Legal and Corporate  
Affairs, General Counsel, and Secretary  
225 City Line Avenue, Suite 200  
Bala Cynwyd, Pennsylvania 19004

Dated: June 3, 2002